

PLANNING COMMISSION
June 10, 2010
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Thursday, June 10, 2010**, beginning at 6:07 p.m. at the Harvey Government Center, 1200 Truman Avenue, Key West, Florida.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

(6:08 p.m.) John Wolfe stated that a roll call was not necessary, as this is a continuation of the June 9, 2010 meeting. Mr. Wolfe provided a summary of the previous day's hearing on Items 5 and 6 and explained how this meeting will proceed. The members of the public intending to speak were sworn in. Mr. Wolfe stated that Items 5 and 6 will be heard together, but voted on separately.

New Items:

5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS CREATING GOAL 107, OBJECTIVE 107.1, AND POLICY 107.1.1 OF THE MONROE COUNTY 2010 COMPREHENSIVE PLAN TO ESTABLISH A SUB AREA POLICY FOR PROPERTY LEGALLY DESCRIBED AS WISTERIA ISLAND & ADJACENT BAY BOTTOM (OR385-897-898), HAVING REAL ESTATE NUMBER 00123950-000000; PROVIDING FOR SEVERABILITY AND REPEAL OF INCONSISTENT PROVISION; PROVIDING FOR THE TRANSMITTAL TO THE SECRETARY OF STATE AND THE DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE.

6. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS TO AMEND THE FUTURE LAND USE MAP (FLUM) DESIGNATION FROM UNDESIGNATED TO MIXED USE COMMERCIAL (MC) FOR PROPERTY LEGALLY DESCRIBED AS WISTERIA ISLAND & ADJACENT BAY BOTTOM (OR385-897-898), HAVING REAL ESTATE NUMBER 00123950-000000; PROVIDING FOR SEVERABILITY AND REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR THE TRANSMITTAL TO THE SECRETARY OF STATE AND THE DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE.

(6:11 p.m.) Susan Grimsley clarified the necessity for the sub-area policy, as well as the necessity for the level of detail in the sub-area policy.

(6:14 p.m.) Mitch Harvey presented an abbreviated staff report. Photographs of existing conditions on Wisteria Island were shown. The two major differences between what staff is recommending and what the applicant is recommending were described as what would make up

the two-acre public access area and the fee charged for that access, as well as how the 30 percent affordable housing requirement is to be calculated. Mr. Harvey reiterated that there will be no upland development until the mooring field is created. Mr. Harvey repeated the following changes made to the sub-area policy at the June 9, 2010 Planning Commission meeting: One, on Page 4, above Paragraph 2(iii), change the word “eliminating” to “providing;” Two, on Page 7 or 8, change “Keys Electric” to “Keys Energy;” and, Three, change all references of “Fort Zachary” to “Fort Zachary Taylor.”

(6:24 p.m.) Nicholas Mulick, Esq. was present on behalf of the applicant. Roger Bernstein and Tom McMurrain, both officers of the applicant, were introduced. Mr. Mulick offered to have a five-minute video presented in lieu of his presentation. Bill Barry presented the video, which showcased the positive effects the mooring field has had in the Boot Key Harbor.

Chairman Wall asked for public comment.

(6:33 p.m.) Ed Swift, local resident, recalled the past development proposed by Mr. Bernstein 27 years ago. Mr. Swift stated that the only way to control this island is to use the island, and encouraged the Commission to approve development on Wisteria Island, with an increase in their affordable housing units from five to 7.5.

Paul Topino, Key West resident, spoke of his support for development on the island and stated that he does not understand any reason why Wisteria Island should not be development. Mr. Topino approves of the planning board’s decision to give Wisteria Island a special designation.

Jack Atkin, local resident, stated that he does not feel special considerations should be given to a project of this nature, and then noted that one cannot compare Wisteria Island to Boot Key Harbor because Wisteria Island is not a harbor. Mr. Atkin’s main concern is the stress that will be put on the utilities in channeling them to Wisteria Island.

Fred Gage, Key West resident, spoke about the needed jobs that this development will create for the local residents and asked that consideration be given to the fact that Wisteria Island is a manmade island. Mr. Gage noted that police and fire would be paid for by taxes generated on the island.

Jason Moffitt, Key West resident, was sworn in. Mr. Moffitt stated that he was not given a job on Sunset Key specifically because he was a resident of Key West, and also pointed out that Key West already has a mooring field that is not full to capacity.

Doug Mayberry, Key West resident, commented that this proposed development strikes a balance, in that it is better to have some development on the near-shore islands so that they are taken care of, rather than letting them become rundown. Mr. Mayberry stated further that residents cannot afford more taxes in order to pay for the clean-up of undeveloped islands.

(6:46 p.m.) David Goodfellow, Monroe County resident, said that Key West as a city needs to decide on and offer an option or an alternative to this development that benefits all of the local residents instead of arguing about it for 27 years. Mr. Goodfellow urged the Commission to take

a strong look at what is currently available before allowing development that nobody is going to be able to afford to use.

Sloan Bashinsky, Key West resident, recommended that this issue be tabled until the City of Key West gets on board with this development. Mr. Bashinsky feels that a takings case is being set up by requesting the Commission to approve the development of 75 units, and further stated that the 75 houses are not replacing even one house because paper rights are being used.

Bill Smunch, Key West resident, read into the record the definitions of “island” and “offshore.” Mr. Smunch stated that not considering Wisteria Island as an offshore island will have wide-ranging implications throughout the Florida Keys.

Scott Frazier, local resident, stated that he disagrees with creating a sub-area policy for a single developer and stated that the photographs shown by staff in this meeting misrepresent the current existing conditions. Mr. Frazier feels that a mooring field does not need a development to improve it, citing the Key West mooring field as an example. The Commission was urged to protect the City of Key West in their decision.

Dave Harris, Key West resident, commented that Wisteria Island is an eyesore with no wildlife living on it. Mr. Harris asked, when comparing Wisteria Island to Sunset Key, why anyone would not opt for another Sunset Key.

Don Billado, local resident, countered that there is wildlife living on Wisteria Island and listed that wildlife. The clean-up efforts of the island by volunteers were described. Mr. Billado wishes for Wisteria Island to be turned into a park.

Deb Curlee spoke on behalf of Last Stand. Last Stand urges the Planning Commission to not approve a change in the current zoning of Wisteria Island. The differences between the proposed Wisteria Island mooring field and the Boot Key mooring field were pointed out. Ms. Curlee stated that an independent environmental assessment of the island is lacking, and told the Commission that Last Stand feels strongly that the environmental impacts, increased density and consequential negative impact on hurricane evacuations outweigh any benefit the development could offer.

(7:02 p.m.) Carl Drysdale, local resident, advised the Commission not to change the status of Wisteria Island from offshore island and spoke of his court actions against the City of Key West with regard to their mooring field. Mr. Drysdale would like for the dry sand area of the island to retain its customary uses for picnicking and sunbathing.

Andrea Quigley, local resident, was sworn in again. Ms. Quigley stated that the proposed development would be a major impact on both the City of Key West and the County. One proposed public benefit given in return for this impact was listed as preservation of land, and Ms. Quigley would like that green space to be specifically in Key West. Her sightings of wildlife on Wisteria Island were described. Ms. Quigley desires to be able to clean up Wisteria Island by volunteer efforts.

Todd German, Key West resident, pointed out that even if the applicant was limited to only two houses, the exotic invasive species would have to be removed, which makes up 90 to 95 of the landscape on the island. Mr. German described all of the indigenous landscaping that has been installed on Sunset Key and how attractive it is. The efforts of the developer in proceeding with this in the right way were noted. Mr. German reiterated the comment made earlier about this proposed development being a balanced development.

Kenneth Campanie, liveaboard resident on the east side of Wisteria Island, described his recent arrest and citations by Officer Dipre of the FWC. Mr. Campanie feels that he is being harassed, after living out there for 11 years and never having a problem previously.

Skip Hartman, liveaboard resident near Wisteria Island, was sworn in. Mr. Hartman feels that the developer doesn't care about the hard-working people who will be misplaced, and may become homeless, due to this development. Mr. Hartman stated that the ads in the paper blaming the dumping of raw sewage overboard for causing the poor water quality is untrue. Chairman Wall asked about alternatives for the liveaboards in this area. Mr. Hartman answered that the free anchorage is unprotected from the wind and in deep water. The complaints about the Key West marina were listed by Mr. Hartman, with the expense being one of them.

(7:19 p.m.) Valerie Shipley, Key West resident, told the Commissioners that Wisteria Island was not destroyed by saltwater intrusion, but by something that was dropped from a helicopter. Ms. Shipley insisted that the property could be cleaned and kept a natural park for the wildlife on the island.

Arnaud Girard was sworn in by Mr. Wolfe. Mr. Girard stated tht the creation of the mooring field does not require the development of the island, and informed the Commssion of the idea of a pumpout sticker being required on every boat's transom to help regulate the pumpout of boats. The derelict vessels that have recently been removed from the area of Wisteria Island were described.

Helen Harrison was sworn in by Mr. Wolfe. Ms. Harrison spoke of her efforts to save the Australian pines at Ft. Zachary Taylor and expressed her sympathy for the liveaboards around Wisteria Island.

Jay Mann, Key West resident, repeated the reports of the proactive action to get rid of the vegetation on Wisteria Island before the saltwater intrusion. Mr. Mann described the wildlife he has seen on the island and stated that if he were required to use a mooring field, it will cost more than he wishes to pay, and use of the free mooring would triple his dinghy time getting to and from town.

(7:30 p.m.) Meli Damire, Key West resident, stated that she is in favor of the development of Wisteria Island and that she believes it could be developed by using green construction as she has seen done in her home country of Spain.

Sheila Mullins asked that the Commission deny the requested amendments to the comprehensive plan because Wisteria Island was never meant to be developed because it is in a high hazard

flood zone. Ms. Mullins said that Wisteria Island should be compared to Ballast Key, a private island developed with two units, as opposed to Sunset Key. Ms. Mullins further stated that creating a sub-area policy sets a bad precedent for developers in the future, and that by the County letting this application go through this process is creating a legal liability for the County.

Jan Isherwood, Key West resident, stated that the fact that the white-crested pigeon nests on Wisteria Island is reason enough not to develop it and that the wildlife on the island should be considered.

Gregory Oropeza, Key West resident and member of the City of Key West Planning Board, was sworn in. Mr. Oropeza wished to express his support for the development plan set forth and reminded the other speakers that Wisteria Island is a private island with private property rights associated with it. Water quality in the area was discussed, as well as the affordability of a mooring field. Mr. Oropeza asked the Commission to support moving the project forward.

David Service spoke of the need for affordable housing in the area and stated that a lot of the workers in Key West are liveaboards.

(7:45 p.m.) Rick Richter, resident of Tavernier, was sworn in. Mr. Richter stated that he supports the initiative to develop Wisteria Island and then discussed the opportunity for smart growth and sustainable development this project could bring.

Joan Kelly spoke about the poor water quality in this area and agreed that Wisteria Island currently is a private island not for use by the public. Ms. Kelly believes the owners should be able to develop the island.

Steve Pisha was sworn in. Mr. Pisha stated that the recreational boats in the area would kill any wildlife that could grow on Wisteria Island, and then said that development is pointless unless the City of Key West is paid for the problems incurred from this development.

Donna Wendell, Key West resident, explained that many years ago this island was proposed to be a park and there were no buyers, and asked the developer to consider making this project as green as possible.

Scott Ryan was sworn in. Mr. Ryan stated that he was in favor of the development.

Mike Mongo, Key West resident, was sworn in. Mr. Mongo commented on the number of people taking time out of their day to speak publicly about this development. A brief history of Christmas Tree Island was given, and then Mr. Mongo proposed that a large tax credit be given to the Bernsteins and the County should then rename the island Bernstein Wildlife Park.

Robert Wagner, Summerland Key resident, spoke about the change in appearance of the sunset on different islands, and then stated that he feels Wisteria Island should be turned into a park.

Chairman Wall asked for more public comment. Nobody came forward. Public comment was closed.

A brief recess was held.

(8:12 p.m.) Mr. Mulick explained that the land swap issue is two-fold: The actual swap and the lease component. The State of Florida has imposed the condition of the creation of a mooring field to go along with the swap. Mr. Mulick stated that it would be inconceivable that Key West would not allow a hookup to their wastewater system if all other components were approved. There is currently no zoning on this island, but this application is seeking to have the land use map reflect a FLUM designation. Mr. Mulick re-emphasized that a mooring field would be beneficial to this area, and then strongly countered the statement that this was a paper transaction regarding the TDRs. Forty acres of environmentally sensitive land must be set aside and donated to the County before this project can get built. Mr. Mulick stressed that native vegetation on the island will be preserved, and then spoke about the amount of conditions being imposed upon the applicant by the County. A videotape of Bruce Popham's presentation at the June 9, 2010 Planning Commission meeting was played.

(8:29 p.m.) Owen Trepanier, of Trepanier & Associates, was present on behalf of the applicant. Mr. Trepanier submitted and explained paperwork outlining the differences between what staff is proposing and what the applicant is proposing in the sub-area policy. On Page 1 of 8, Number 5, the applicant would like it to read: "It is located adjacent to a deep water commercial port designated in Florida Statutes Section 403.021(9)(b)." Mr. Harvey did not object.

The applicant proposed adding to Number 7 that Wisteria Island is located outside any coastal barrier resource area. Mr. Harvey agreed. The applicant proposed adding to Number 8 that this sub-area policy only applies to an island that is located outside any national wildlife refuge. Mr. Harvey agreed with that as well. The applicant proposes that Number 12 read: "It is an artificial land mass that is dominated by invasive non-native vegetation." Mr. Roberts agreed with that.

The applicant proposes adding a Number 13, which would read: "The offshore island under the comprehensive plan policies generally meets the County definition for disturbed lands." Mr. Harvey specified that definition is from the Definitions section of the land development code. The applicant asked that Number 14 read: "While there are a variety of avian species that may use the island for foraging, resting and nesting, it does not provide suitable nesting habitat needed to support rookeries of colonial water birds as natural offshore islands typically do." Mr. Roberts agreed. The applicant proposes adding another Number 15, which simply says that it has access to water at least four feet below mean sea level at low tide. Mr. Harvey agreed.

On Page 3 of 8 the applicant agreed with staff's request to change the language "requiring the owner to purchase and preserve 40.1 acres of land" to now read "requiring the owner to acquire and donate to Monroe County 40 acres of upland land." Ms. Grimsley added the language: "40 acres of upland land that contains native habitat within unincorporated Monroe County from Tier I, Tier II or Tier III within any land use district. The land to be dedicated and preserved shall be inspected by the County biologist to assure it is acceptable for acquisition and donation." Mr. Harvey added that "See Item 3B within this policy" be stricken.

There was discussion of the issue on Page 4 of 8 that has to do with the 30 percent set aside for inclusionary housing. Mr. Cameron stated that he had a problem with the location of the free anchorage area being so far out. Mr. Trepanier added that the area around Frankford Bank would be put into a conservation program and that it is unsuitable for anchorage. Chairman Wall disagreed with the proposed free anchorage area eliminating a certain number of mooring buoys for work force housing. Commissioner Lustberg asked for, and received, clarification from staff on what the actual rules are for anchoring on state bay bottom. Mr. Harvey reminded the Commission that staff strongly recommends the quantity of 30 percent be used as opposed to the 20 moorings as written. Ms. Grimsley added that it should say employee housing, not work force housing. Mr. Trapanier again reiterated that the applicant really takes issue with the statement that says “consistent with Monroe County inclusionary housing requirements,” because it is not consistent with the inclusionary housing requirements. Ms. Grimsley suggested deleting the first part of that phrase and using the language “30 percent of the mooring slips.” The cost of a mooring slip in the different marinas and mooring fields in the Keys was discussed. Rich Jones explained the definition of a “slip.”

Mr. Harvey mentioned that on Page 4 of 8, (iii), based on the comment from yesterday, the word “eliminating” should be changed to “providing.” Mr. Trepanier proposed, on Page 6 of 8, Number 9 read: “All mooring field-related facilities in Section 1 above, including the restaurant and bar in Section 2 above, shall be public access.” The applicant feels that there is so little space on this island and that they are doing a tremendous amount of public good by opening the island up to public access, which is a tremendous public benefit. Mr. Harvey commented that staff feels there should be a two-acre compact open recreational space, and that it should be in a natural area and left in a natural state. Mr. Roberts stated that a boardwalk over marsh areas would be an appropriate inclusionary item in a recreational space. Mr. Trepanier added that by taking another portion of the island and making that a public area really degrades the feeling of exclusiveness. Chairman Wall stated that this is a complicated situation, because once there is a requirement of a public park, it would seem there would be a requirement to provide dockage for it. Mr. Schwab pointed out that the open space requirement of 1.6 acres is the standard open space required. Mr. Trepanier noted one last technical change on Page 7 of 8. The document should read that electricity is coming from Keys Energy.

(9:23 p.m.) Commissioner Werling preferred to continue the matter as opposed to putting forth a motion tonight, as it deserves careful consideration. Commissioner Lustberg agreed to continuing the matter, but stated that she has questions and wants to move forward with a better understanding of things before the matter is continued. Commissioner Hale agreed to continuing it, but thinks that staff and the applicant need to work on the public access issue and the percentage number dedicated for employee housing.

Mr. Mulick voiced his concerns about continuing this matter. Mr. Wolfe suggested that the Commission give guidance to the staff as to where they need to work with the applicant

(9:36 p.m.) Mr. Mulick clarified that the land swap to acquire the bottom between Sunset Key and Wisteria Island would have to be done before the utilities could be run to Wisteria Island. Commissioner Lustberg stated that since the mooring field is tied to the development, a more long-term agreement is needed on how the mooring field would be operated or would be

reclaimed in the case that it was not functioning properly. Commissioner Werling reiterated that the property development should be a stand-alone project and should stand on its own merits.

The possibility of the County being able to regulate a mooring field in this area, and the associated costs, was discussed. Mr. Jones stated that he believes the state would have conditions on that bay bottom swap, such as making sure that it is properly maintained and properly engineered and designed. Mr. Jones then explained what is involved with a bay bottom swap as opposed to a lease. Mr. Wolfe suggested reframing the conditional use portion of the sub-area policy to tie the development directly to the mooring field.

Commissioner Lustberg voiced her concern that there may be other islands that come in and apply under this new goal specifically created for Wisteria Island to have their future land use map changed because spoil islands are now being addressed in a different way. Mr. Harvey explained that the objective of 107.1 is really countywide, and that this objective 107.1 is where a specific parcel is given direction as to what extent density and intensity will be allowed on that particular parcel.

Motion: Commissioner Hale made a motion to continue the matter to the next meeting on June 23, 2010 at 10 o'clock a.m. Commissioner Werling seconded the motion. Chairman Wall requested staff to work on the public access requirement by joining some additional property to the facility on the island that is already designated for public use by way of restaurants, ship stores, et cetera. Chairman Wall stated that at the next meeting there will be open limited public discussion on new issues. **There was no opposition. The motion passed unanimously.**

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 10:14 p.m.